IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 238 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MANUBHAI MERABHAI SONARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 238 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR AY KOGJE Ld. APP for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 03/07/2002

ORAL JUDGEMENT

The petitioner by invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, has challenged the legality and validity of the

order of externment passed by the Sub Divisional Magistrate, Dholka in Externment Case No. 47 of 2001 vide order dated 17.9.2001. It is pleaded that this externment order has been confirmed by the Appellate Authority namely the Deputy Secretary (Home), Sachivalaya, Gandhinagar while dealing with the appeal. Both these orders are assailed by the petitioner.

The notice to show cause Annexure-A, indicates that the petitioner was asked to execute sureties at the end of the proceedings and it is not reflected in the notice that the petitioner had violated any of the conditions of the surety bond executed in compliance of the order passed in the chapter case. The allegations made in the notice to show cause, on plain reading are found vague and very general in nature. On account of registration of two different criminal cases; (i) u/s. 326, 323, 324, 504, 506(2) and 114 of IPC and u/s. 135 of Bombay Police Act and (ii) u/s. 323, 504, 506(2) & 114 of IPC which were pending on the date of issuance of show cause notice, the harsh action of externment whether required to be taken was the question before the Sub Divisional Magistrate and he has failed in appreciating the totality of facts available on record.

Placing reliance on the decision in the case of Dafer Rahman Zafar vs. State of Gujarat & Ors., reported in 1999(1) GLH p. 425, it is submitted that the period and area of operation of the alleged activity of the petitioner has not been mentioned in the notice to show cause, therefore, the notice is vague and general in nature. Therefore, also,the order of externment would not sustain.

Three persons from the same family were ordered to be externed by three different orders passed on one day i.e. 17.9.2001. Tow of such orders, have been quashed by this Court vide orders dated 12.4.2002 and 26.6.2002 while dealing with the Special Criminal Applications No. 207/2002 and 188/2002 respectively. By adopting the reasonings assigned by the Court while quashing the order of externment passed against the petitioners of both the petitions can be adopted and, therefore, they are adopted. So, on the same reasons, the order of externment passed against third brother i.e. present petitioner under challenge and confirmed by the Appellate Authority i.e. Deputy Secretary (Home) can be quashed.

In the result, this petition is allowed. The order of externment passed by the Sub Divisional

magistrate dated 17.9.2001 and confirmed by the Deputy Secretary (Home) Sachivalaya, Gandhinagar are quashed and set aside. Rule is made absolute accordingly. DS permitted.

(C.K. BUCH, J.)
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